

Memo

To: Kerry Speidel, CAFO
From: Barb Lefebvre, for the Sewer Commission
Date: 1/15/2009
Re: Potential Conversion of old Primary School to Senior Rental Housing

Kerry, as requested, the Sewer Commission would like to raise a few points and questions regarding the proposed development to the old Primary School on School Street.

- The development of the property will affect the flows currently being used to develop the CWMP with Wright Pierce.
- The developers must anticipate the payment of privilege fees at the time of hook up. The fee will be based upon the number of residential units, and shall not exceed \$4620.59 per unit (40% of betterment cost \$11,551.47) based on the Sewer Assessment By-law. The commissioners were unsure of the total number of units in the design. The handout references the total units of the project as both a 40-unit project and a 26-unit project. Once the number of units is confirmed, the maximum privilege fee that could be charged would be calculated as $\$11,551.47 \times .4 \times \# \text{ of units}$
- The developers must also anticipate the payment of connection fees – per the sewer connection policy of 2/1/05, the connection charge would be the minimum charge (\$1760.00) plus an additional \$550 for each additional bedroom beyond three bedrooms. Again, not sure of the total bedrooms proposed, we have provided the formula for your determination.
- We would like the DPW Director, Jack Rodriquez, to review and provide his opinion of this project.
- And lastly, the commissioners would like to know who will be doing the peer review for the Town of Lunenburg?

Thank you.

Barb

Board Members

George L. Emond, Chairman
David M. Shea
Perry Jewell
Rachelle Kendall
C. Ernie Sund



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LUNENBURG BOARD OF HEALTH

To: Kerry Speidel, CAFO
From: George Emond, Chairman
Date: December 18, 2008
Re: Potential Conversion of Old Primary School Building

This office has reviewed the documents regarding the potential conversion of the Old Primary School to Senior Rental Housing. We have the following comments:

1. Based on the proposed number of units and proposed building footprint, the use of the existing sewage disposal system would not be possible. The existing system design flow is not adequate and part of the proposed building would be built on the current system.
2. Will each unit have their own kitchen or will there be a central kitchen serving the residents?
A central kitchen facility would require review and permitting by the Board of Health.

George Emond, Chairman
Board of Health

Sent: Monday, January 12, 2009 1:53 PM
To: kspeidel@lunenburgonline.com
Subject: response to memo 12/8

Kerry,

As requested I have reviewed all of the documents submitted to us by JNJUHL and Associates. You had asked for a response by today and as you are aware I have not only read the documents provided but the entire binder that was submitted previously. I believe that there is a strong need for senior housing in the area and many of the seniors who attend our programs have voiced support for a project of this type. My concerns with the application are as follows:

I think that the town should go for option # 1 Mixed Income Senior Housing as laid out on pg. two of the proposal. I have serious doubts that HUD will continue to fund Sec. 202 Supportive Housing much longer especially in this economy. Secondly, I know of a case where the owner has applied to HUD to eliminate their 202 housing by paying out on the loan. In doing so the renters will no longer be able to pay just the 30%, they were notified that the units were now becoming marketable rate because the owner is paying off the total amount of the loan given to him by HUD.

Pg. 5 paragraph 5, (Development Concept) It states that as the "population grows older their medical needs increase, police, and fire, and ambulance services will be needed from time to time to address these needs." As discussed in an earlier memo these facilities also place a heavy burden on the COA's for such services as transportation, Meals on Wheels, etc. etc.

Which brings me to page 6, (Development Concept) The application says that the Partnership (Eagle Heights SH) and "it's State lenders would be looking for property tax relief from the town of Lunenburg in exchange for the \$5 million commitment in capital funding for that project as well as social service coordinator funds." Would the town be in a position to fund a 20 hours social service coordinator for approximately 60 people when in fact our COA budget is currently 28 hours a week for a total of 2070 elders town wide? There are cuts to this position already proposed.

Lastly, does this project have 501c3 status? If not how can they be looking for property tax relief. You may want to check with the assessor because if they do have 501c3 the only areas that would be tax exempt are the common areas. If the each of the units have a door that closes and locks it is subject to taxation .

That's all the input I have at this moment,
Doreen

Sent: Tuesday, December 23, 2008 9:52 AM
To: kspeidel@lunenburgonline.com
Subject: RE: conversion of old primary school

Kerry, In response to the selectman's request for comments on this proposal, please forward these comments to them from the building department.

If a 40B project is pursued, then zoning compliance is not an issue. A 40R project would also be OK. This approach could bring money into the town. Perhaps 40R could be an option with the proposed developer. Zoning does not allow this size project by right in the residential district. 40B and 40R are exempt.

The developer expresses that he will be designing the building plans under the sixth edition of the building code. Permits would have to be issued by March of 09 in order to do so. The new seventh edition of the building code takes effect at that time unless the state extends the grace period to still use the old sixth edition.

As with all other 40B applications, the Zoning Board of Appeals, at my request, has stipulated that the developer would have to put aside, in an escrow fund held by the ZBA, an agreed upon fee for all building inspections. This fee could be used as a stipend for the inspections for the building, which could be done by my assistant in that manner. This is a common practice for 40B projects. With a 10% anticipated budget cut, my assistants line item will be gone. This method could be helpful to supplement this lose.

If there are any more questions or concerns relative to this project please contact me at your convenience.

Town of Lunenburg
Office of the Board of Assessors

PO Box 135 Lunenburg, MA 01462
978-582-4145

Assessors

Christopher Comeau, Chairman
Carl E. Sund, Member
Fred Liatsis, Member

Louise Paquette, Administrative Assessor
Harald M. Scheid, Regional Tax Assessor
David Manzello, Associate Assessor

Memo

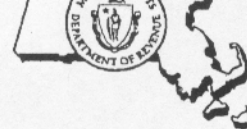
To: Kerry Speidel, CAFO
From: Harald Scheid, Assessor *HMS*
CC: Board of Assessors
Date: December 30, 2008
RE: Taxation of Old Primary School

Dear Ms. Speidel,

You asked me to respond to a question about the tax status of the proposed Eagle Heights Senior Housing development to be located at the old primary school. Specifically, a question has been raised about whether this property, owned by Eagle Heights Limited Partnership, qualifies for property tax exemption.

Affordable housing developed by non-government entities do not under any circumstances qualify for property tax exemption. For profit companies are outright precluded from receiving tax exemptions for their housing developments, even if all or a portion of the rentable units are set aside for low or moderate income housing. Non-profits may seek an exemption under Massachusetts General Law, Chapter 59, Section 5, Clause 3 if they can demonstrate to the local Board of Assessors that their properties are used for strictly charitable purposes, and that their organization is the occupant. Renting living units to tenants, who we presume hold no charitable status, does qualify the building's owner to a tax exemption.

In support of my statements, I have included as an attachment a Department of Revenue decision.



May 18, 2006

Manuel D. Silva, Principal Assessor
Board of Assessors
Town of Wilbraham
240 Springfield St.
Wilbraham, MA 01095

Re: Falcon Housing Corp.
28 Miles Morgan Ct.
Our File No. 2006-111

Dear Mr. Silva:

I am writing in regard to your question whether certain real property of Falcon Housing Corp. ("FHC") qualifies for a property tax exemption. Based on the information you provided to us, it is our understanding that FHC is a not-for-profit, private association that provides affordable housing for low-income seniors. FHC owns property located at 28 Miles Morgan Ct. in Wilbraham for which it has applied for a charitable tax exemption. The property consists of 12 acres. On approximately 2 of the acres is a 3-story facility with 44 one-bedroom rental apartments and 3 community rooms. The apartments are rented at below fair market rates. The remaining 10 or so acres consist of conservation land and wetlands.

You have raised the question whether FHC is a tax-exempt organization. As you know, the requisites, which a charitable organization must satisfy in order to qualify for a tax exemption on real property, are set out in Chapter 59, Section 5, Clause Third of the General Laws. This provision allows an exemption from property tax assessment upon:

"real estate owned or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations."

This statutory provision sets out three, discrete requisites, all of which must be satisfied in order for real property to qualify for exempt status. First, the organization must be a charity. Secondly, the charitable organization must own the property. And finally, the charitable organization or some other charitable organization must occupy the property for a charitable purpose.

According to the paperwork you submitted, FHC uses its property (i) to provide affordable, safe, sanitary housing to low-income seniors, and (ii) to make space available to non-profit volunteer groups. These activities would be considered charitable in nature. Providing living

quarters to needy persons and making space available to the public for community events are considered charitable uses of property.¹ Therefore, since the purposes and activities of FHC are charitable in nature, FHC would likely qualify as a charitable organization. In addition, FHC owns the property on which it conducts these activities. Thus, the issue here relates solely to the occupancy requirement.

Even if FHC is considered a charitable organization, it still must show that the occupancy of its property is in furtherance of its stated charitable purposes.² Here, FHC rents apartment units to qualifying low-income seniors. Where a charitable corporation rents dwelling units, the property is considered to be occupied by the tenants, not by the charitable corporation.³ Therefore, FHC does not satisfy an essential Clause Third requisite for one of its charitable uses of the property.

The assessors, however, may be required to take into account any restrictions placed by governmental regulations on the actual income received by FHC. The Supreme Judicial Court has held that federal restrictions on rental income must be taken into consideration when valuing a parcel since the federal restrictions were a condition for financing and the project could not have been undertaken without this federal assistance.⁴ The paperwork you submitted indicates that FHC built its elderly housing facility with funding from the Department of Housing and Urban Development. If FHC received government financing that placed restrictions on the amount that could be charged for rents, the assessors must take into consideration those restrictions in determining the property's value.

Further, FHC may be entitled to a partial charitable exemption. Where a charitable owner occupies property for a combination of charitable and non-charitable activities, the portion of the property occupied for charitable purposes is entitled to a partial exemption.⁵ In addition to renting apartment units, FHC makes space in its facility available to non-profit volunteer groups. It is also possible that FHC uses a portion of the facility as its administrative offices, i.e., as the place where records are stored and officers conduct the organization's business, or for other activities in furtherance of its charitable purposes. Therefore, if you determine that these activities are sufficiently substantial, FHC will be entitled to a pro-rated exemption based on the percentage amount of the property used for those purposes.

In our view, however, whether FHC's charitable uses of the property are substantial enough that the property could be said to be occupied for charitable purposes is a determination that the board of assessors must initially make. To the extent that FHC disagrees with the determination made by the assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

1 See MIT Student House, Inc. v. Board of Assessors of Boston, 350 Mass. 539 (1966); Newton Centre Woman's Club v. City of Newton, 258 Mass. 326 (1927).

2 See Boston Lodge, B.P.O.E. v. City of Boston, 217 Mass. 176 (1914); Salem Lyceum v. City of Salem, 154 Mass. 15 (1891).

3 See Charlesbank Homes v. City of Boston, 218 Mass. 14 (1914); Lynn Hospital v. Board of Assessors of Lynn, 383 Mass. 14 (1981).

4 See Community Development Company of Gardner v. Assessors of Gardner, 377 Mass. 351 (1979); Truehart v. Board of Assessors of Montague, Appellate Tax Board Docket Nos. 198055, 198056, 198057 (April 21, 1999).

5 See Assessors of Worcester v. Knights of Columbus, 329 Mass. 532 (1952).